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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL BLAUKOPF, IOI K. LAM, ERAN DAVIDOV,
and DOV ZANDMAN

Appeal 2008-0629
Application 09/963,435
Technology Center 2100

Decided: July 31, 2008

Before ALLEN R. MACDONALD, JAY P. LUCAS, and STEPHEN C.
SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1-20. We have jurisdiction under 35 U.S.C.
§ 6(b). We affirm.

A. INVENTION

The invention at issue involves mediating communication between software applications (Spec. 1). In particular, a first and a second application communicate with each other via corresponding first and second mediation modules. The communication may include function calls, function parameters, function results, and event notifications (*id.* 2).

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A method of communicating function calls or event notification between two applications, said method comprising:

a first application launching a second application, wherein the launching of the second application includes the first application passing an event port number and a command port number to the second application, wherein the port numbers are stored in a memory accessible to the second application.

C. REJECTION

Claims 1, 12, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,719,942 (“Aldred”) and U.S. Patent No. 5,680,549 (“Raynak”). Claims 2-6, 8-11, 13-17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aldred, Raynak, and U.S. Patent No. 6,005,568 (“Simonoff”). Claims 7 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aldred, Raynak, Simonoff, and U.S. Patent No. 5,423,042 (“Jalili”).

II. CLAIM GROUPING

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii) (2005).¹

Appellants argue claims 1, 12, and 20 as a first group (App. Br. 4-12), claims 5 and 16 as a second group (App. Br. 13), claims 7 and 18 as a third group (App. Br. 14-16), and claim 6 separately (App. Br. 13-14). Appellants do not provide additional arguments in support of claims 2-6, 8-11, 13-17, and 19, but rely on allowability of corresponding independent claims 1, 12, and 20 (App. Br. 12).

We select claim 1 as the sole claim on which to decide the appeal of the first group, claim 5 as the sole claim on which to decide the appeal of the second group, and claim 7 as the sole claim on which to decide the appeal of the third group. Because Appellants have not provided additional arguments in support of claims 2-4, 8-11, 13-15, 17, and 19, we group claims 2-4, 8-11,

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

13-15, 17, and 19 with claims of the first group. We decide the appeal of claim 6 separately.

III. CLAIMS 1-4, 8-11, 13-15, 17, AND 19

As set forth above, we select claim 1 to decide the appeal of claims 1-4, 8-11, 13-15, 17, and 19.

Appellants assert that “Aldred in view of . . . Raynak does not teach or suggest a first application launching a second application, where the launching of the second application includes the first application passing an event port number and a command port number to the second application” (App. Br. 5) because “[n]owhere does Aldred describe passing event port numbers and command port numbers to an application *as part of launching that application*” (App. Br. 6) and that “**Aldred very clearly teaches that ports . . . are only configured after an application has registered with the support system**” (App. Br. 7). Appellants also argue that “Raynak does not teach or suggest passing a command port number and an event port number” (App. Br. 11).

The Examiner finds that Aldred discloses a “launch_app” that is “issued by an application to invoke another application” (col. 29, ll. 19-20) in which a “specified target application” is to be invoked involving the passing of parameters (col. 36, ll. 21-45) (Ans. 11). Hence, the Examiner demonstrates that Aldred discloses a first application launching a second application including passing parameters to the second application.

In addition, the Examiner finds that Aldred discloses the first application “executing . . . to establish a communication channel having specified characteristics between [the] first application and [the] second application” (col. 1, ll. 61-65) in which the “ends of channels are known as ports” (col. 6, ll. 24-25), the ports having “an assigned connect type: event, command or null” (col. 7, ll. 44-45). Hence, the Examiner demonstrates that Aldred discloses the first application launches a second application including establishing a communication channel (having event, command, and null ports) by passing parameters to the second application. We also agree with the Examiner that it would have been obvious to one of ordinary skill in the art, given that the first application of Aldred (i.e., “launch_app”) passes parameters to the second application to establish a communication channel with ports, to pass data associated with the ports in order to establish the communication channel as disclosed by Aldred.

Appellants cite Aldred col. 11, ll. 34-36 for support that because Aldred “**very clearly teaches that ports . . . are only configured after an application has registered with the support system**” (App. Br. 7), Aldred does not teach or suggest “**passing event port numbers and command port numbers as part of launching an application via the launch_app API function**” (*id.*). Aldred discloses that a “launching application is returned a handle to the application [which] is only valid in very restricted circumstances until the launched application has registered with the support system” (col. 11, ll. 34-36). Appellants do not explain how Aldred’s

disclosure of returning a handle to a launching application that is valid until the application has registered with a support system leads to a conclusion that data such as port information is not passed to the application. Indeed, it does not appear, and Appellants do not show, that whether the handle is valid until the application registers with the system or until any other time bears any relevance to passing parameters to the application. On the contrary, as set forth above, because Aldred discloses that a first application (i.e., “launch_app”) establishes a communication channel with a second application, the communication channel having ports, and that the first application passes parameters to the second application, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to pass information from the first application to the second application that is relevant to establish the ports and the communication channel such as information pertaining to the ports (i.e., event port number and command port number).

Appellants further assert that “Aldred teaches away from one application passing event port numbers and command port numbers as part of launching another application” (App. Br. 7) because “Aldred clearly teaches the benefits of an application first registering with a call manager and joining a share set before initiating or configuring channels and ports” (*id.*). As set forth above, even if an application first registers with a system, Appellants have failed to demonstrate that a first application (i.e., “launch_app”) fails to launch a second application including passing port

information to the second application, particularly in view of Aldred's disclosure that a first application launches a second application by establishing a communication channel with the second application, the channel including ports, as described above. Because Appellants have not demonstrated that Aldred fails to teach or suggest this feature, we disagree with Appellants that Aldred teaches away from this feature.

Appellants argue that although Raynak "teaches passing a communication port ID (e.g. COM1, COM2, etc) and a baud rate," "Raynak does not teach or suggest passing a command port number and an event port number" (App. Br. 11). Raynak discloses an "IM [application that] may invoke the application and pass to the SLAP application the information needed to take control of the network connection" (col. 6, ll. 36-39), the information including information that "tells the SLAP application how to interpret the communications port (% port) setting . . . [p]referably, the port parameter is set to the numeric value for the identifier or open handle for the device" (col. 6, ll. 60-65). Hence, Raynak discloses a first application (i.e., "IM application") that launches (i.e., invokes) a second application (i.e., "SLAP application") including passing "port parameter" information to the second application, the "port parameter" information including numeric values for an identifier and that interprets the communications port setting. We disagree with Appellants' contention that there is a patentable distinction between the communication port numeric values disclosed by Raynak and the port numbers recited in claim 1 because both are passed from a first

application to a second application and both are numbers that pertain to ports.

Appellants also assert that “**modifying Aldred’s system . . . would change the principle of operation of Aldred’s system**” (App. Br. 9) because “Aldred’s system relies upon applications registering and utilizing both the call managers and the support system software via Aldred’s API” (*id.*). As set forth above, we agree with the Examiner that Aldred discloses a first application launching a second application and passing parameters to the second application (i.e., launch_app launching a second application and establishing a communication channel – including ports – with the second application). We disagree with Appellants’ contention that modifying Aldred’s system would change the principle of operation of Aldred’s system because the principle of operation of Aldred’s system includes establishing communication channels between a first application and a second application with corresponding ports. Passing port information from the launch_app to the second application to establish the communication channel with corresponding ports would correspond to this principle operation of Aldred because if the first application establishes the communication channel (and ports), it would have been obvious for the first application to provide the information for establishing the proper ports for the channel (i.e., port information).

Appellants also argue that the “respective teachings of Aldred and Raynak pertain to very different methodologies that clearly teach away from

one another” (App. Br. 11). Based on this assertion, Appellants conclude that “the Examiner’s proposed combination of Aldred and Raynak is improper” (*id.*). As set forth above, Aldred discloses a first application establishing a communication channel (including ports) in passing parameters to a second application to launch the second application. Likewise, Raynak discloses a first application (i.e., “IM application”) invoking a second application (i.e., “SLAP application”) including passing port information. We disagree with Appellants’ contention that Aldred and Raynak “pertain to very different methodologies that clearly teach away from one another” (App. Br. 11) because Aldred and Raynak appear to both disclose a first application launching a second application by passing parameters from the first application to the second application, the parameters being used to establish a communication channel (or ports). Appellants have not demonstrated how Aldred and Raynak teach away from one another in view of the fact that both Aldred and Raynak are in the same field of endeavor, perform the same function, and perform closely related activities (i.e., passing channel or port information from one application to another) to accomplish the same result (launch or invoke a second application).

In addition, “[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27

F.3d 551, 553 (Fed. Cir. 1994). In the present case, neither Aldred nor Raynak discourage a first application launching a second application including passing port parameters to the second application. Indeed, launching a second application and passing parameters (including port information) appears to be precisely what each of Aldred and Raynak disclose. Therefore, we disagree with Appellants' contention that Aldred and Raynak teach away from one another.

Appellants assert that "the Examiner has failed to provide a proper motivation for combining the teachings of Aldred and Raynak" (App. Br. 12). "What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be "more than the predictable use of prior art elements according to their established functions." *Id.* at 1740. In the present case, Aldred discloses a first application launching a second application and passing parameters to the second application to establish a communication channel (including ports) with the second application, as set forth above. Raynak discloses a first application invoking a second application including passing port information to the second application (i.e., "SLAP application"). Modification of Aldred to including passing port information to establish the communication channel would have entailed no more than arranging old elements (passing parameters as disclosed by Aldred and/or Raynak), performing the same function (i.e., launching a second application and

establishing a communication channel with the second application) to yield expected and predictable results (i.e., launching the second application and establishing the communication channel). We note that in *KSR*, the Supreme Court reaffirmed that “when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 1. We therefore affirm the rejection of claim 1, and of claims 2-4, 8-11, 13-15, 17, and 19, which fall therewith.

IV. CLAIMS 5 AND 16

As set forth above, we select claim 5 to decide the appeal of claims 5 and 16.

Appellants argue that “Aldred in view of Simonoff does not teach or suggest passing a function reference value through the command port connection” (App. Br. 13) because “in Aldred, the status of an API call is handled between the application issuing the call and the support system, and not between the launching and launched applications” (*id.*).

Aldred discloses “application A [that] . . . requests [a] service [and supplies] . . . the appropriate parameters” and “another application B being made aware of that request” (col. 24, ll. 40-44). Aldred also discloses

commands that “allow control information to be sent between applications” (col. 12, ll. 44-45) that includes a first application establishing “a communication channel . . . between [the] first application and a second application” (col. 1, ll. 63-65), the ends of the channel being “known as ports” (col. 6, ll. 24-25) that include “event, command or null” ports (col. 7, ll. 44-45), the “command ports [allowing] the application to drive the receipt or supply of data to the port” (col. 7, ll. 46-47). Thus, Aldred discloses a first application (e.g., application A) establishing a communication channel (and ports) with a second application including and requesting a service supplied by the second application (i.e., application B) by supplying “the appropriate parameters” and commands being sent between the applications. Also, because command ports “allow the application to drive the receipt or supply of data to the port” (col. 7, ll. 46-47), it stands to reason that commands are sent between the applications via a command port. We therefore disagree with Appellants’ contention that Aldred fails to disclose passing a function reference value through a command port connection.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 5. Therefore, we affirm the rejection of claim 5, and of claim 16, which falls therewith.

V. CLAIMS 7 AND 18

As set forth above, we select claim 7 to decide the appeal of claims 7 and 18.

Appellants assert that “Aldred, Raynak, Simonoff and Jalili fails to teach or suggest passing a value of a memory location for storing results of a function triggered by the passing of the function value” (App. Br. 15).

The Examiner finds that Jalili discloses an `init_table_pointer` (ITP) and a server that “may pass memory locations (in the form of pointers): ‘the server passes the ITP (the location of this space) to the entry function where the ITP is stored in the entry function argument’ [column 7 «lines 30-33»]” (Ans. 21) and also discloses “‘The function is passed the value in the state field 288 which points to the pre-allocated space where the arguments to the function reside’ [column 9 «lines 35-37»]” (*id.*).

Because Jalili discloses an `init_table_pointer` (ITP) that defines a memory location in an `init_table` 230 (col. 7, ll. 22-24) and that a “server runs the entry function which in turn fills the `init_table` 230” (col. 7, ll. 33-34), we agree with the Examiner that Jalili discloses passing a value of a memory location (i.e., the pointer ITP that indicates a memory location in the `init_table` 230), the memory location (i.e., in the `init_table`) for storing a result (i.e., results of running the entry function).

Therefore, we affirm the rejection of claim 7, and of claim 18, which falls therewith.

Appeal 2008-0629
Application 09/963,435

VI. CLAIM 6

Appellants assert that “Aldred and Raynak, in further view of Simonoff, does not teach or suggest passing a function parameter through the command port connection” (App. Br. 13).

We disagree with Appellants’ contention for reasons similar to those discussed above for claim 5.

Therefore, we affirm the rejection of claim 6.

VII. ORDER

In summary, the rejections of claims 1-20 under § 103(a) are affirmed.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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